IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8261 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GONDAL SHAHER SUDHARAI KAMDAR JUTH (INTUK)

Versus

GONDAL NAGARPALIKA

Appearance:

MS HANSA B PUNANI for Petitioner

MR PR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/03/2000

ORAL JUDGEMENT

Learned advocate Mr. Karia is appearing for the petitioner. None present for the respondent. In this petition, the petitioner union has challenged the award passed by the industrial tribunal in reference No. 797

of 1984 dated 6th August, 1989 under which the tribunal has rejected the claim of the union. Brief facts of the present petition are that the union has raised the industrial dispute in respect of 32 workmen that they should be considered to be permanent employees from the date when they completed 240 days' continuous service and accordingly, they are entitled to the benefits as permanent employees. the respondent Nagarpalika has filed its reply to the said reference before the tribunal contending inter alia that those 32 workmen are working as daily rated workmen in different categories and if all the said workmen are directed to be made permanent, same would unnecessarily create financial burden on the respondent Nagarpalika It was also pointed out by the respondent Nagarpalika before the tribunal that there is permanent set up sanctioned by the authority and there is no vacancy in the permanent set up. According to the Government Resolution, 10% daily rated workmen are continued in service and they will be given the work as and when the work is available. Before the tribunal, the General Secretary of the petitioner union Haribhai was examined. The tribunal was of the view that the burden would lie on the union to prove and justify the demand raised by it by leading the evidence, both oral as well as documentary. Not only that, the tribunal was also of the view that the union has not given any details of those 32 workmen and, therefore, in absence of any such evidence and material as regards said workmen, the tribunal was of the opinion that it has no option but to reject the said reference. Accordingly, under its impugned award, the tribunal rejected the reference.

I have heard Mr. Karia, learned advocate appearing for the petitioner union. He has submitted that the tribunal has committed gross error in rejecting the reference. He has submitted that the tribunal has committed gross error which is apparent on the face of the record in rejecting the reference. He was, however, unable to point out the same from the award and also from the evidence brought before the tribunal. He was not able to point out any infirmity and/or jurisdictional error committed by the tribunal in rejecting the said reference.

I have gone through entire award passed by the tribunal. The Tribunal has given detailed reasons in paragraph 7,8,9and 10 and has discussed all the issues raised before it but the tribunal found itself helpless to appreciate the merit of the demand for want of sufficient evidence and material in respect of the workman. I am, therefore, of the view that the tribunal

is justified in rejecting the said reference. No other submissions have been made. The impugned award does not call for any interference in exercise of the power under Article 226 and/or 227 of the COnstitution of India. This petition is, therefore, required to be rejected. Same is accordingly rejected. Rule is discharged.There shall be no order as to costs.

23.3.2000. (H.K.Rathod,J.)

Vyas